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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1987

FRANK BENEVENTO AND JOSEPH BENEVENTO,

Petitioners,

vs.

MOBIL OIL CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL SIXTH APPELLATE DISTRICT

JOHN McBRIDE
CHRISTOPHER E. PLATTEN
WYLIE, McBRIDE, JESINGER & SURE
101 Park Center Plaza, Suite 1001
San Jose, California 95115
(408) 297-9172

Counsel of Record

QUESTION PRESENTED

Whether the Petroleum Marketing Practices Act of 1978 (PMPA), 92 Stat. 322, as amended, 15 U.S.C. § 2801 *et seq.*, preempts state common law tort actions asserting violation of the implied covenant of good faith and fair dealing, fraud, and interference with prospective advantage involving conduct extraneous to a franchise agreement and distinct from a claim under the PMPA for termination of a franchise agreement.

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MOBIL OIL CORPORATION,

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PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL SIXTH APPELLATE DISTRICT

Petitioners, Frank Benevento and Joseph Benevento, petition for a writ of certiorari to review the decision of the California Court of Appeal, Sixth Appellate District in this case.

OPINIONS BELOW

The opinion of the court of appeal (App., *infra,* la-9a) is reported at 189 Cal.App.3d 485. The decision of the California Supreme Court denying a petition for review of the opinion of the state court of appeal (App., *infra,* lb) is unreported.

JURISDICTION

The decision of the California Supreme Court was entered on May 14, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTORY PROVISION INVOLVED

Section 106(a) of the Petroleum Marketing Practices Act, 15 U.S.C. 2806(a), provides:

> (a) To the extent that any provision of this subchapter applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

STATEMENT OF THE CASE

1. Frank Benevento and Mobil entered into a service station lease contract and retail dealer agreement on July 27, 1980, under the terms of which, *inter alia*, Frank Benevento (in partnership with his brother Joseph Benevento) operated a Mobil service station from September 1, 1980 through August 31, 1983. On April 22, 1983, a new written service station lease was entered into for the period September 1, 1983 through August 31, 1986 (App., *infra*, 2a). From August 16, 1979 through March 31, 1984, the Beneventos operated the marketing premises at 1869 Camden Way, San Jose, California, selling motoring fuel to the public under Mobil's trademarks and operating a lucrative business in car repair. (*Id.*)

Both contracts for operation of the service station provided that the contracts would terminate thirty (30) days prior to the expiration of Mobil's underlying ground lease for the property. On December 23, 1983, Mobil informed the Beneventos that the master lease had not been renewed and under the terms of the contract, Frank Benevento's franchise relationship with Mobil was terminated. (*Id.*)

The complaint alleges that Mobil possessed an option to renew the underlying lease, under the exact same terms and conditions, for an additional period of five years commencing April 1, 1984, but that Mobil, after entering into a second contract with the Beneventos failed to renew the underlying lease by failing to exercise its option. (*Id.*)

Mobil does not dispute these allegations, or the facts that the lease could have been renewed at no cost, that Mobil could have assigned the lease at no cost to the Beneventos, or that Mobil never intended to renew the underlying lease because petitioners had failed to meet an undisclosed motor fuel minimum sales volume marketing policy.

The Beneventos sued Mobil in the California Superior Court on the basis of three tort law theories. The thrust of the Beneventos' claims, however, is that Mobil misrepresented to the Beneventos that it intended to renew the underlying ground lease (and that it failed to disclose that it intended to terminate the underlying lease because of petitioners' failure to meet an undisclosed motor fuel minimum sales policy) and in justifiable reliance thereon, the Beneventos forewent relocating their business elsewhere in April, 1983. (*Id.*)

Thus, the Beneventos do not base their claims on the nonrenewal of a contract with Mobil. Rather, all three claims are premised upon Mobil's alleged action *extraneous* to the franchise relationship, that is, Mobil's fraudulent conduct in inducing them to forego relocation of their business, *coupled with* Mobil's alleged intent to frustrate petitioners' enjoyment of their economic rights. The Beneventos have *not* sued Mobil under contract law for breach of its franchise agreement with Frank Benevento.

2. Mobil's initial response to this action was to remove the matter to federal court. The federal district court remanded the matter *sua sponte*. (*Id.*) Mobil then demurred on the grounds of preemption in reliance upon the PMPA; the state superior court overruled it. Ultimately, Mobil brought a motion for summary judgment before the state superior court on its assertion of preemption under the PMPA as a defense at law. The trial court denied the motion (App., *infra,* 2a-3a), concluding among other things that "[p]laintiffs' causes of action are not pre-empted by the Petroleum Marketing Practices act." (App. *infra*, 3a) Thereafter followed Mobil's writ petition to the California Court of Appeal which was granted by the decision reported at 189 Cal.App.3d 485, and which by its terms is the first reported California case on the issue presented for review. (App., *infra*, 5a) The court of appeal found "that the Beneventos' claims are preempted by the PMPA and therefore cannot be maintained under California law." (App., *infra*, 7a) The court of appeal's decision was grounded upon a finding "that the Beneventos cannot avoid a conclusion that *in essence* each of their claims is for the termination of the franchise[.]" (*Id.*)(Emphasis added) Thus the court of appeal explained "[t]ermination of the ground lease, for whatever purposes and with or without honest disclosure, was significant to the Beneventos only because it worked a termination of the franchise." (*Id.*)

The Beneventos sought review of the court of appeal decision, and on May 14, 1987 the California Supreme Court denied their petition for review. (App., *infra*, lb) Having exhausted the state court process, the Beneventos bring the instant petition so that this Court may examine the preemptory scope of the PMPA in light of the fundamental legal and policy issue presented and in light of the conflicting views found in the reported decisions. (*See, infra*, fn. 3)

REASONS FOR GRANTING THE PETITION

The notion that PMPA precludes a franchisee from seeking redress for tortious breach of contract, fraud, and other state law remedies is directly at odds with the underlying Congressional

intention of providing additional safeguards to service station franchisees. "[PMPA] must be given a liberal construction consistent with its overriding purpose to protect franchisees." *Brach v. Amoco Oil Co.*, 677 F.2d 1213, 1221 (7th Cir. 1982). Accordingly, the preemptive scope of PMPA warrants scrutiny and review by this Court.

It is established that, in general, state authority to legislate in a particular field can be preempted by federal law in two ways. *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n.*, 461 U.S. 190, 203-04 (1983). Congress can intend to supersede state law in a given field, *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977), or state law may actually conflict with federal law. *Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 152-53 (1982). The application of the preemption doctrine to a particular case is often a matter of statutory construction and a judicial determination of the Congressional intent behind a specific federal statute. The Congressional purpose animating PMPA is the "ultimate touchstone." *Pilot Life Ins. Co. v. Dedeaux*, _ U.S. _, 107 S.Ct. 1549, 1552 (1987). The court of appeal decision does not engage in, nor demonstrate investigation of the Congressional intent behind the PMPA as it relates to the common law theories advanced herein. Rather, the court of appeal's decision rests solely upon adherence to the broad rule of preemption under the PMPA involving formally codified state statutes which contain regulatory provisions parallel in scope and purpose to the PMPA. Thus, the court of appeal's decision relies exclusively upon the opinion in *California Arco Distributors, Inc. v. Atlantic Richfield Co.*, 158 Cal.App.3d 349, 365-366 (1984), which found that California Business and Professions Code Section 20999.1 is preempted by the PMPA. (App., *infra*, 4a) The court of appeal decision incorrectly intuited a broad preemptory scope to the PMPA.

Congressional purpose to preempt state law can be either express or implied. Absent express language, Congressional intent to occupy a field may be discovered from either a "'scheme of federal regulation . . . , so pervasive as to make reasonable the inference that Congress left no room for the states

to supplement it,' because 'the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state law on the same subject,' or because 'the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose.'" *Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta, supra*, 458 U.S. at 153 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

Naturally, state law is also preempted by Congressional legislation "to the extent that it actually conflicts with federal law." *Fidelity Fed. Sav. & Loan Ass'n*, 458 U.S. at 153. An actual conflict exists when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963), or "where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

In order to evaluate the extent to which the PMPA preempts the common law theories advanced herein, this Court must scrutinize the statutory language and legislative history of the PMPA, "the subject matter of the regulated field and the interest in uniformity, . . . the pervasiveness of the federal statutory scheme . . . [and the] impediments that state regulation might pose to federal objectives." *County of Suffolk v. Long Island Lighting Co.*, 728 F.2d 52, 57 (2nd Cir. 1984). Primarily, the PMPA was enacted to establish "protection for franchisees from arbitrary or discriminatory termination or non-renewal of their franchises." (S. Rep. No. 731, 95th Cong., 2d Sess. 15, *reprinted in* 1978 U.S. Code Cong. & Ad. News 873, 874 [cited as Senate Report].) Thus, the PMPA sets out various grounds and accompanying notice requirements for termination and non-renewal, and precludes termination of a franchise on grounds other than those specified in the statute. Foremost was Congress' recognition of the inherent disparity "of bargaining power which exists between the franchisor and the franchisee," (*id.* at 876), and the resulting misfortunes of the franchisee. Congress was concerned with the coercive relationship between the franchisor and the franchisee and sought through passage of the PMPA

to shield the franchisee from arbitrary and discriminatory acts of franchisors.

PMPA was enacted by Congress to protect petroleum franchisees from unfair conduct on the part of a franchisor:

> [O]ften the reasonable expectations of the parties to a motor fuel franchise are that the relationship will be a continuing one. This expectation by the franchisee, in particular, is often the result of and fostered by, statements and actions of the franchisor. As a result, nonrenewal of a motor fuel franchise relationship at the expiration of its term can be almost as punitive as termination of the franchise during its term. *The reasonable expectations of the franchisee, rather than any definitive contract rights, are destroyed.*
>
> * * * *
>
> An essential requirement of federal legislation is that the grounds for termination and nonrenewal provided by the legislation not be so broad as to deny franchisees meaningful protection from arbitrary or discriminatory terminations and nonrenewals or present fulfillment of the reasonable renewal expectations of franchisees.

Senate Report at 875 (emphasis added).

The PMPA neither expressly nor impliedly preempts all state law relating to any aspect of the petroleum franchises. Nothing in the PMPA suggests that Congress intended to preempt the entire field of contract law *sub silentio* or otherwise intended to allow petroleum franchisors to abrogate valid contractual rights afforded to service station dealers or avoid tort liability for fraud perpetrated upon service station dealers. "The

PMPA does not prevent the parties from entering into a contract." *Lyons v. Mobil Oil Corp.*, 526 F.Supp. 961, 965 (D. Conn. 1981). The PMPA was never intended to immunize a franchisor's acts of misconduct from judicial scrutiny or to permit a franchisor to abrogate existing contractual or other rights, but instead "constitute[s] a *diminution of prior rights of franchisors* and thus should not be extended beyond the Act's language and purpose." *Russo v. Texaco, Inc.*, 630 F.Supp. 682, 687 (E.D. N.Y.), *aff'd*, 808 F.2d 221 (2nd Cir. 1986) (emphasis added). Thus, the PMPA "preempts only state statutes as to grounds for, procedures for, and notification requirements with respect to termination or non-renewal." *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300, 304, (2nd Cir. 1986). In addition to complying with PMPA, a franchisor must also abide by any promises between itself and the franchisee. *DiNapoli v. Exxon Corp.*, Bus. Fran. Guide (CCH) Paragraph 7818 at 13,105 (D. N.J. 1982) (contractual agreement between parties creates a condition to franchisor's right of termination under PMPA); *see also, Hanes v. Mid-Americal Petroleum, Inc., 577 F.Supp. 637, 645 (W.D. Mo. 1983)* ("reference to State law to determine whether an oral agreement existed between the parties would not conflict with the policies underlying the PMPA"); *Ted's Tire Service, Inc. v. Chevron U.S.A., Inc., 470 F.Supp. 163 (D. Conn. 1979)* [1].

The PMPA's preemption provision states that:

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1 *See also, Nesheiwat v. Mobil Oil Corp.*, Bus. Fran. Guide (CCH) Paragraph 8283 at 14, 939-14, 940 (D.C. Cal. 1984) ("[c]ommon law claims including fraud or contract claims, are included in the scope of preemption under the PMPA [only] *to the extent they purport to apply to issues of franchise termination or nonrenewal contrary to the effect of the PMPA*" (emphasis added)). *Accord, Continental Enterprises, Inc. v. Americal Oil Company*, 808 F.2d 24, 28 (8th Cir. 1986).

> [to] the extent that any provision of this subchapter applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue to effect any provision of any law or regulation (including any remedy or penalty thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of any such notice with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of the subchapter.

15 U.S.C. § 2806. By its own language the PMPA "does not preempt all state laws regulating petroleum franchises." *Ted's Tire Service, Inc. v. Chevron U.S.A., Inc., supra*, at 162.

In promulgating the PMPA, Congress carefully specified the limits of the power it intended to exercise. Those limits are decreed in the Senate Report as a:

> single, uniform set of rules governing the *grounds* for termination and non-renewal of motor fuel marketing franchises and the *notice* which franchisors must provide franchisees prior to termination of a franchise or non-renewal of a franchise relationship.

Senate Report, *supra*, at 877 (emphasis added). "Beyond those limits, state regulation may claim full approbation." *Exxon Corp. v. Georgia Ass'n of Petroleum Retailers*, 484 F.Supp. 1008, 1017, (N.D. Ga. 1979), *aff'd*, (5th Cir.) 644 F.2d 1030, *cert. denied*, 454 U.S. 932 (1981). The decision of the court of appeal below reads the preemptive effect of the PMPA expansively, in contradiction to the Congressional purpose, beyond the intended limits of the PMPA, in an area that Congress left to the control of the states. Indeed, the Senate Report states that "[t]o the extent that the provisions of title I do *not* apply to an

aspect of the franchise relationship, State laws dealing with such aspects of the relationship are not preempted." Senate Report, *supra*, at 900.

It is apparent from the legislative history of PMPA that Congress was seeking to protect franchisees from arbitrary or discriminatory terminations and nonrenewals and, in doing so, intended to create a single, nationwide set of minimum standards as to what grounds would justify the termination or nonrenewal of an existing dealership and what type of notice of termination or nonrenewal must be provided by a petroleum franchisor to its franchisee. Consequently, Congress sought in 15 U.S.C. § 2806 to preempt the patchwork quilt of state "good cause" statutes (*see, e.g.*, Cal. Bus. & Prof. Code § 20999.1) which existed as of 1978 to protect dealers against wrongful termination.

The court of appeal decision is directly at odds with the clear legislative intent of Congress in enacting PMPA, a statute which was intended to provide *additional* protection (not less protection) to petroleum dealers against wrongful termination or nonrenewal of their franchises. Nothing in PMPA or its legislative history, or judicial decisions interpreting the scope of its preemptive effect, (e.g., *Bellmore v. Mobil Oil Corp., supra*), purports to shield petroleum franchisors from liability for other acts of misconduct.[2*]

This case involves common law causes of action separate and distinct from the notice and grounds for termination of a franchise. The gravamen of the Beneventos' claims concern misrepresentations made by Mobil distinct from the franchise agreement, but for the purpose of inducing Frank Benevento to forego locating the business elsewhere and instead agree to a new service station contract. Congress did not intend the PMPA to shield Mobil from such fraudulent conduct. This Court should address the fundamental issue of legislative intent and statutory scope which was blithely ignored by the decision in the court of appeal below and which, because of the conflicting views contained in reported decisions,[3*] deserves examination.

*See footnotes on page 11

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN McBRIDE
CHRISTOPHER E. PLATTEN
WYLIE, McBRIDE, JESINGER & SURE
101 Park Center Plaza, Suite 1001
San Jose, California 95115 (408) 297-9172

Counsel of Record

August 10, 1987

2 *But cf., Humboldt Oil Co. v. Exxon Co.*, Nos. 86-1916, 86-1956 (9th Cir. July 30, 1987) (PMPA preempts state law claim for breach of oral contract and interference with prospective economic advantage for refusal to accept assignment of franchise).

3 *See e.g., Bellmore v. Mobil Oil Corp., supra; Humboldt Oil Co. v. Exxon Co., supra. See also, Continental Enterprises. Inc. v. Atlantic Richfield Co., supra*, 808 F.2d at 28 (8th Cir. 1986); *Consumers Petroleum Co. v. Texaco, Inc.*, 804 F.2d 907, 912 (6th Cir. 1986) (PMPA preempts state law claims of misrepresentation and fraud); *Jimenez v. B.P. Oil, Inc.*, 652 F.Supp. 329, 333 (D. Md. 1987) (PMPA does not preempt Maryland statute requiring franchisor pay franchisee full value of business goodwill upon termination).

APPENDIX A

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MOBIL OIL CORPORATION,

H002259
Petitioner,
(Santa Clara County
Super.Ct.No. 549001)

vs.

SUPERIOR COURT OF THE
COUNTY OF SANTA CLARA,

Respondent.

FRANK BENEVENTO
and
JOSEPH BENEVENTO,
Real Parties in Interest.

_____/

Mobil Oil Corporation is the named defendant in an action by Frank and Joseph Benevento arising out of their loss of a Mobil service station lease. The lease terminated when Mobil elected not to renew the underlying ground lease. The Beneventos pled three theories based in California common law: Violation of an implied covenant of good faith and fair dealing, fraud, and interference with prospective advantage. Mobil moved for summary judgment, arguing among other things that these

claims are preempted by federal law. The motion was denied; Mobil seeks review. We conclude, as a matter of law, that the Beneventos' claims were preempted. Accordingly we shall issue a peremptory writ of mandate.

In their second amended complaint the Beneventos alleged that they operated a Mobil gas station in San Jose, under written service station leases from Mobil, on premises leased from the landowners by Mobil. The Beneventos acknowledge that each of the successive service station leases provided that the station lease would automatically terminate 30 days prior to the expiration of the ground lease. The stated term of the most recent station lease was from September 1, 1983, to August 31, 1986. The ground lease was due to expire during that term, but Mobil had an option to renew the ground lease for an additional period of 5 years beginning April 1, 1984. Mobil did not exercise the option. As a result the Beneventos lost their station lease in March 1984.

The Beneventos sued Mobil on the theories enumerated above. Among other things they alleged that a representative of Mobil had given them false assurances concerning the ground lease and that with respect to the ground lease Mobil had acted fraudulently, in bad faith, and with intent to disrupt the Beneventos' economic relationships with their established customers. The Beneventos sought relief including compensation for emotional distress and punitive damages. Mobil's initial response was to remove the action to the federal district court. In federal district court the Beneventos moved to remand to the superior court, and the matter was remanded. Then Mobil demurred; respondent court overruled its demurrer.

The Beneventos argue that the remand and the demurrer ruling made clear that both the federal district court and respondent court believed the Beneventos' claims were not preempted, and that Mobil's summary-judgment motion and this writ petition represent attempts to relitigate an issue already resolved. But neither these orders nor the moving papers have been made available to this court: We have been given no way to know precisely what issues were presented and resolved.

Thus we have no basis on which to question respondent court's implicit conclusion that the preemption issue was properly before it on Mobil's ensuing motion for summary judgment.

In support of its summary-judgment motion, Mobil invoked the federal Petroleum Marketing Practices Act (15 U.S.C. §§ 2801-2806), which would define Mobil as a "franchisor," at least one of the Beneventos as a "franchisee," and the station lease as a "franchise." (*Id.* S 2801.) In part relevant to these circumstances the PMPA provides that a franchisor may terminate a franchise only in circumstances described, and only in accordance with procedures specified, in the PMPA. (*Id.* § 2802 subd. (a).) The PMPA contains detailed provisions for relief by civil action brought by the franchisee in the event a franchisor "fails to comply with the requirements of section 2802 . . . " (*id.* § 2805) and an express preemption clause which (in part pertinent to these issues) provides:

"To the extent that any provision of this subchapter applies to the termination . . . of any franchise, . . . no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination . . . of any such franchise . . .unless such provision of such law or regulation is the same as the applicable provision of this subchapter." (*Id.* § 2806, subd. (a).)

Only one published California appellate opinion has discussed the PMPA in any detail; consistent with several federal cases, it concludes that the PMPA was enacted to protect both franchisees and franchisors, and "to promote nationwide uniformity of laws relating to the termination or nonrenewal of a franchise." (*California Arco Distributors, Inc. v. Atlantic Richfield Co.* (1984) 158 Cal.App.3d 349, 361-362; see also *Brach v. Amoco Oil Co.* (7th Cir. 1982) 677 F.2d 1213, 1216-1217; *Kostantas v. Exxon Co., U.S.A.* (5th Cir. 1981) 663 F.2d 605, 606.)

Mobil's motion for summary judgment developed relatively little dispute as to the underlying facts: It acknowledged that it had permitted the ground lease to expire, but tendered no factual response to the Beneventos' allegations that it had acted

in bad faith, maintaining that its motivation was legally irrelevant. Respondent court denied the motion, concluding among other things that "[p]laintiffs' causes of action are not preempted by the Petroleum Marketing Practices Act." This writ petition followed.

A threshold question is whether the relatively narrow PMPA preemption clause (15 U.S.C. § 2806 subd. (a)) extends to common-law theories as distinct from a formally codified legislative or administrative "law or regulation." As a broad generalization, any preemptive effect of a particular piece of federal legislation will extend to common law rights and remedies. (E.g., *San Diego Unions v. Garmon* (1959) 359 U.S. 236, 244 (NLRA).) Most of the reported decisions of federal district judges who have considered the issue have agreed that common law theories and remedies *are* preempted by the PMPA. (E.g., *Continental Enterprises, Inc. v. American Oil Co.* (W.D. Mo. 1986) 628 F.Supp. 126, 128-130 (citing several of the earlier cases); *Graeber v. Mobil Oil Corp.* (D.C.N.J. 1985) 614 F.Supp. 268, 271; *Siecko v. Amerada Hess Corp.* (E.D. Pa. 1983) 569 F.Supp. 768, 773; *Huth v. B.P. Oil, Inc.* (D. Md. 1983) 555 F.Supp. 191, 194; *Meyer v. Amerada Hess Corp.* (D. N.J. 1982) 541 F.Supp. 321, 332; *Nesheiwat v. Mobil Oil Corp.* (C.D. Cal. 1984) Bus. Franch. Guide (CCH) Paragraph 8283.) This narrow issue appears not to have been directly addressed in any reported California decision.

California Arco Distributors, Inc. v. Atlantic Richfield Co., supra, 158 Cal.App.3d 349, 365-366, states a relatively broad rule of preemption under the PMPA. In our view the purposes of the federal statute, as stated in *California Arco Distributors,* support a conclusion that the PMPA does preempt common-law rights and remedies. The Beneventos do not contest this conclusion. Instead they maintain that the subject-matter of their action is outside the purview of the PMPA, arguing that they "do not base their claims on the non-renewal or discontinuation of *their* contract with Mobil[. R]ather, all three claims are premised upon Mobil['s] alleged action *extraneous* to the franchise relationship, that is, Mobil's fraudulent conduct, *coupled with* Mobil's alleged intent to frustrate

plaintiffs' enjoyment of their economic rights." The Beneventos insist that these are "extraneous" *tort* claims rather than "a contract claim under the PMPA for non-renewal of their franchise agreement." For this proposition they cite *Nesheiwat v. Mobil Oil Corp., supra,* presumably relying on a narrow reading of the federal district judge's conclusion that ''[c]ommon law claims including fraud or contract claims, are included in the scope of preemption under the PMPA *to the extent they purport to apply to issues of franchise termination or nonrenewal contrary to the effect of the PMPA.*" (Bus. Franch. Guide at pp. 14,939-14,940 (emphasis added).) To support their purview argument the Beneventos rely on precedents from the highly-developed caselaw of preemption under the federal labor statutes. (E.g., *San Diego Unions v. Garmon, supra; Farmer v. Carpenters* (1977) 430 U.S. 290.)Finally, the Beneventos cite the accepted proposition that '"[t]he federal Act does not preempt all state laws refulating
petroleum franchises; rather it merely supplants those provisions which are different from the PMPA."' (*California Arco Distributors, Inc. v. Atlantic Richfield Co., supra,* 158 Cal.App.3d 349, 359.)

Mobil's response is that the Beneventos cannot avoid a conclusion that in essence each of their claims is for the termination of their franchise. We agree: Termination of the ground lease, for whatever purposes and with or without honest disclosure, was significant to the Beneventos only because it worked a termination of the franchise. The courts have perceived, and the language and legislative history of the PMPA support, a congressional intent that claims which, in the last analysis, are for assertedly improper termination of a petroleum franchise be brought only under the PMPA or local law which is ''the same as" the PMPA. Only in this way can some semblance of uniformity in the treatment of such claims be assured.

The California common-law remedies are not the same as those available under the PMPA. Two significant differences are immediately obvious: Under the PMPA, "[t]he question of whether to award exemplary damages and the amount of any

such award shall be determined by the court and not by a jury" (15 U.S.C. § 2805(d)(2)), and "the court may, in its discretion, direct that reasonable attorney and expert witness fees be paid by the franchisee [here, the plaintiffs Benevento] if the court finds that such action is frivolous" (*id.* subd. (d)(3)).

We conclude that the Beneventos' claims are preempted by the PMPA and therefore cannot be maintained under California law.

Our conclusion renders it unnecessary for us to consider Mobil's additional contentions.

The procedural requirements for a peremptory writ in the first instance have been met. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-178.)

Let a peremptory writ of mandate issue directing respondent Superior Court of Santa Clara County to vacate its order in action 549001, Benevento et al. v. Mobil Oil Corporation et al., denying Mobil Oil Corporation's motion for summary judgment and to enter a new order granting summary judgment for Mobil Oil Corporation.

_____

Capaccioli, J.

WE CONCUR:

_____

Agliano, P. J.

_____

Brauer, J.

MOBIL OIL CORPORATION V. SUPERIOR COURT (BENEVENTO)
No. H002259

APPENDIX B

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

6th District, No. H0002259
S000398

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

MOBIL OIL CORPORATION, Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF
SANTA CLARA, Respondent;
BENVENTO et al., Real Parties in Interest.

Petition for review of Real Parties in Interest DENIED.

Mosk, J., is of the opinion the petition should be granted.

LUCAS
Chief Justice

FILED: MAY 14, 1987

(2)

Supreme Court, U.S.
FILED
SEP 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-258

In The
Supreme Court of the United States
October Term, 1987

FRANK BENEVENTO AND JOSEPH BENEVENTO,
Petitioners,

vs.

MOBIL OIL CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN R. REESE*
LESLIE G. LANDAU
Three Embarcadero Center
San Francisco, California
Telephone: (415) 393-2000
Attorneys for Respondent Mobil Oil Corporation

WILLIAM K. O'BRIEN
McCUTCHEN, DOYLE, BROWN & ENERSEN
Of Counsel

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED

Did the California Court of Appeal err by holding that Petitioners' state law claims are essentially for wrongful termination of Petitioners' franchise and that therefore they are preempted by the Petroleum Marketing Practices Act ("PMPA")?

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No. 87-258

In The
Supreme Court of the United States
October Term, 1987

FRANK BENEVENTO AND JOSEPH BENEVENTO,
Petitioners,

vs.

MOBIL OIL CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The court below found that the essence of Petitioners' state law allegations is a claim for wrongful termination of their petroleum products franchise. Since California's common-law remedies are not "the same as" those of the PMPA (*See*, 15 U.S.C. § 2806(a)), the court concluded that Petitioners' claims "are preempted by the PMPA and therefore cannot be maintained under California law." App. 6a.

Petitioners contend that their claims should be interpreted as being "*extraneous* to the franchise relationship".

Pet. 3 (emphasis in original). Based on this interpretation, they conclude that they can prosecute the claims without regard for the requirements of the PMPA.

The only question is which interpretation of Petitioners' allegations is correct. That question is of concern to the parties in this case only. At best, it is a question of state law of no concern to this Court. Moreover, the court below answered it correctly.

Petitioners have not identified any federal issue of consequence or as to which there are conflicting decisions requiring resolution by this Court. The Petition should be denied.

———o———

STATEMENT OF THE CASE

Petitioners operated a service station as franchisees of Mobil Oil Corporation ("Mobil"). Before the franchise was entered into Mobil notified Petitioners in writing that the franchise was subject to an underlying lease between Mobil and the owner of the service station property, and that if Mobil did not renew the lease it would expire and terminate the franchise prematurely. Mobil decided not to renew the underlying lease, and it expired, thus terminating Petitioners' franchise. The PMPA expressly validates termination in these circumstances. 15 U.S.C. § 2802(c)(4).

Petitioners sued Mobil in the California state court. Their complaint alleged:

> As a result of the acts of defendants . . . plaintiffs' service station was terminated . . . . [P]laintiffs lack

> adequate contract damages to make them whole for losses incurred due to termination of the service station lease.
>
> As a direct and proximate result of the acts of defendants . . . plaintiffs have sustained damages by reason of loss of profits from the operation of the gas and service station . . . .
>
> * * *
>
> Defendants failure to renew the underlying lease to the premises and failure to disclose their intention not to renew the lease were acts designed to disrupt Plaintiffs' economic relationships by preventing Plaintiffs from continuing their service station operations at the premises . . . . Plaintiffs' customers were denied access to plaintiffs' services because of the closure of plaintiffs' service station . . . .

Complaint ¶¶ 8-9, 22.

Petitioners characterized the legal theories of their complaint as (1) breach of an implied covenant of good faith and fair dealing, (2) fraud, and (3) interference with prospective economic advantage. Mobil answered the complaint, denying the charges on the merits. Mobil also moved for summary judgment on the ground that Petitioners' complaint was essentially for wrongful termination of the franchise and therefore was preempted by the PMPA. The trial court denied the motion.

The state court of appeal reversed, holding Petitioners' claims preempted. The court's analysis was that:

> [In] essence each of [Petitioners'] claims is for the termination of their franchise . . . . Termination of the ground lease, for whatever purposes and with or without honest disclosure, was significant to the Beneventos only because it worked a termination of the franchise.

> The courts have perceived, and the language and legislative history of the PMPA support, a congressional intent that claims which, in the last analysis, are for assertedly improper termination of a petroleum franchise be brought under the PMPA or local law which is "the same as" the PMPA. Only in this way can some semblance of uniformity in the treatment of such claims be assured.

App. 5a.

Since Petitioners sought to invoke local law remedies that are not "the same as" the PMPA, the court held that their claims "are preempted by the PMPA and therefore cannot be maintained under California law." *Id.* 6a. The California Supreme Court declined to review that decision. App. 1b. Now Petitioners want this Court to review it on certiorari.

SUMMARY OF ARGUMENT

The parties agree that: (1) The PMPA governs the standards for terminating petroleum franchises; (2) Under the PMPA, a franchisor may terminate a franchise if the underlying groundlease expires; and (3) The PMPA expressly preempts any state law remedies related to franchise termination not "the same as" the PMPA. The case law unanimously agrees.

The court of appeal reviewed this law, scrutinized the complaint and determined that Petitioners' claims are preempted by the PMPA because "in essence each of [the] claims is for the termination of their franchise." App. 5a.

Petitioners quarrel with the court of appeal's interpretation of their complaint and ask this Court to review it. But there is nothing of consequence to review. At most,

this case involves the interpretation of a state law complaint by an intermediate appellate state court (not "a state court of last resort," S.Ct. Rule 17(b)), which concerns only these parties and is best left to the state court in any event. Moreover, the court of appeal's decision was correct. There is no reason to grant review and the Petition should be denied.

ARGUMENT

The parties agree on the law. The PMPA governs the standards for the termination or non-renewal of gasoline franchises. "Congress enacted the PMPA in an effort to protect 'franchisees from arbitrary or discriminatory termination or non-renewal of their franchises.'" *Brach v. Amoco Oil Co.*, 677 F.2d 1213, 1216 (7th Cir. 1982) (quoting S. Rep. No. 95-731, 95th Cong., 2d Sess. 15, *reprinted in*, [1978] U.S. Code Cong. & Ad. News 873, 874 ["Senate Report"]). Pet. 6. Thus, the PMPA defines the circumstances that will justify a termination or non-renewal of a franchise.

One such circumstance is "[t]he occurrence of an event which is relevant to the franchise relationship" that makes "termination of the franchise . . . reasonable." 15 U.S.C. § 2802(b)(2)(C). And, one such "event" is "loss of the franchisor's right to grant possession of the leased marketing premises through expiration of the underlying lease."[1]

---

[1] Termination of a franchise is permissible if the franchisee had written notice, before the commencement of the franchise term, of the duration of the underlying lease and the fact that it might expire. Petitioners concede that those conditions were met here. Complaint ¶¶ 5, 7.

15 U.S.C. § 2802(c)(4). The legislative history of the PMPA makes it clear that a termination under this section is reasonable even if the franchisor declined an option to renew the ground lease: "Expiration of the underlying lease could occur under a variety of circumstances, including, for example, a decision by the franchisor not to exercise an option to renew the underlying lease." Senate Report at 896.[2]

The parties also agree that "Congress clearly intended to provide uniform minimum standards for the termination and non-renewal of franchises and to bar state regulation of this area." *Continental Enterprises, Inc. v. American Oil Co.*, 808 F.2d 24, 27 (8th Cir. 1986). Pet. at 9. The PMPA thus expressly preempts any state law remedies, including common law claims, that are not "the same as" those in the PMPA. 15 U.S.C. § 2802; *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 246-47 (1959); *Continental Enterprises, Inc. v. American Oil Co.*, 628 F. Supp. 126, 128-130 (W.D. Mo. 1986); *Graeber v. Mobil Oil Corp.*, 614 F. Supp. 268, 271 (D. N.J. 1985); *Siecko v. Amerada Hess Corp.*, 569 F. Supp. 768, 772-773 (E.D. Pa. 1983); *Huth v. B.P. Oil, Inc.*, 555 F. Supp. 191, 194 (D. Md. 1983); *Meyer v. Amerada Hess Corp.*, 541 F. Supp. 321, 332 (D.N.J. 1982); *Nesheiwat v. Mobil Oil Corp.*, Bus. Franch. Guide (CCH) ¶ 8283 (C.D. Cal. 1984). The PMPA does not preempt state law remedies that do not concern the termination or non-renewal of franchise, 15 U.S.C. § 2802; *Exxon*

---

2 This provision reflects Congress' recognition of "the importance of providing adequate flexibility so that franchisors may initiate changes in their marketing activities to respond to changing market conditions and consumer preferences." Senate Report at 877.

Corp. v. Georgia Ass'n of Petroleum Retailers, 484 F. Supp. 1008, 1017 (N.D. Ga. 1979), *aff'd*, 644 F.2d 1030 (5th Cir. 1981), *cert. denied*, 454 U.S. 932 (1981).

In short, the parties, the courts and the legislature all agree on what the law is. The only question is whether it was correctly applied by a California intermediate appellate court in this particular case. That is not a matter for the Court's review. *See* S.Ct. Rule 17(b) ("Special and important reasons" for granting review include "*when a state court of last resort* has decided a federal question in a way that conflicts with the decision of . . . a federal court of appeals") (emphasis added); *Ross v. Moffit*, 417 U.S. 600, 616-17 (1974) ("this court's review . . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review").

In any event, the court of appeal's decision that "in essence each of [Petitioners'] claims is for the termination of their franchise" was correct. Petitioners allege that Mobil "failed to renew the underlying lease" or to exercise the option to renew. Complaint ¶ 7. Petitioners then allege that "as a result of the acts of defendants . . . plaintiffs' service station lease was terminated" and "losses were incurred due to the termination of the service station lease." Complaint ¶ 8. They sought damages from Mobil for this conduct.

The Court below analyzed the complaint and found that, "[t]ermination of the ground lease, for whatever purposes and with or without honest disclosure, was significant to the Beneventos only because it worked a termination of the franchise." App. 5a. Therefore, the court held that the claim can "be brought only under the PMPA or local law

which is 'the same as' the PMPA." *Id.*[3] This was correct, and supported by all the authorities that have addressed the question. *See Nesheiwat v. Mobil Oil Corp.*, Business Franchise Guide (CCH) ¶ 8283 at 14939-40. (C.D. Cal. 1984) ("common law claims, including fraud and contract claims, are included in the scope of preemption under the PMPA to the extent they purport to apply to issues of franchise termination or nonrenewal contrary to the effect of the PMPA"); *W&S, Inc. v. Atlantic Richfield Co.*, Business Franchise Guide (CCH) ¶ 8207 at 14,593 (N.D. Cal. 1984) ("The PMPA expressly preempts any California law which purports to touch on [termination and non-renewal] unless their provisions are 'the same as' the PMPA"); *Continental Enterprises, Inc. v. American Oil Co.*, 808 F. Supp. 24, 28 (D. Conn. 1979) (Court holds tortious interference with contract, breach of contract and misrepresentation claims preempted: "Continental's main contention is that Amoco wrongfully failed to renew the 1971 franchise agreement or wrongfully terminated the 1980 agreement. These allegations fall squarely within the area covered by the PMPA").

---

[3] Petitioners suggest that their claims are based upon affirmative misrepresentations by Mobil that induced them to believe that the franchise relationship would be a continuing one. This claim is belied by the contract, which expressly stated the date that the groundlease expired and that the franchise would end if the groundlease ended. Parole evidence is inadmissible to contradict this express agreement. *E.g., Nimmo v. Fitzgerald,* 202 Cal. 565 (1927). But even this is irrelevant. The PMPA took into account the effect of representations by a franchisor in setting termination standards: "[T]he expectation [of a continuing relationship] . . . is often the result of, and fostered by, statements and actions of the franchisor." Senate Report at 876. Congress clearly recognized the potential for claims like Petitioners', established PMPA standards to deal with them, and preempted any different common law remedy.

Petitioners cite a number of cases in an effort to demonstrate "conflicting views contained in reported decisions." Pet. 10-11. *Bellmore v. Mobil Oil Corp.*, 783 F.2d 300 (2d Cir. 1986); *Humboldt Oil Co. v. Exxon Co.*, 823 F.2d 373 (9th Cir. 1987); *Consumers Petroleum Co. v. Texaco*, 804 F.2d 907, 912 (6th Cir. 1986); *Jiminez v. B.P. Oil, Inc.*, 652 F. Supp. 329, 333 (D. Md. 1987). But these cases are either consistent with the court of appeal's decision and the on-point case law, or inapposite. *Bellmore* and *Jiminez* hold that a state law requiring a franchisor to pay for the goodwill of a station upon termination is not preempted by the PMPA. The rationale is that such a remedy is available irrespective of the validity of a franchise termination, and therefore does not concern the standards for termination. *Bellmore*, 783 F.2d at 305; *Jiminez*, 652 F. Supp. at 333. *Bellmore* and *Jiminez* are different from this case, and call for a different result.

Consumers Petroleum supports the court of appeal's decision. Plaintiff there purported to state a fraud claim based on a franchisor's failure to notify it of its intention to withdraw from the market. The court held the claim preempted:

> [The PMPA] does preempt any state law with respect to "grounds for, procedures for and notification requirements" with respect to terminations and nonrenewals . . . [and] expressly preempts any state law providing remedies or penalties for any violations of the notice provisions of the Act.
>
> * * *
>
> If we were to hold that the state law claims could proceed, the impact of the misrepresentation or fraud claims would produce a result in complete variance with what the notice provision of the Act requires.

804 F.2d at 915 (citations omitted). Similarly here, Petitioners' tort claims would make actionable a termination that is concededly lawful under the PMPA.[4] That would turn the PMPA on its head and frustrate its objectives.

Finally, *Humboldt* is irrelevant. It held that a franchisee may not frustrate the purposes of the PMPA by assigning a franchise (but continuing to operate it) to avoid legitimate termination based on the franchisee's felony conviction. If *Humboldt* says anything relevant to this case, it is that franchisees cannot use legal gymnastics to avoid the terms of the PMPA. That too supports the court of appeal's decision.

In short, the cases consistently reject franchisees' efforts to avoid the terms of the PMPA by creative pleading. That is exactly what the court of appeal rejected, too. Plaintiffs premise their tort claims on Mobil's "failure to renew the underlying lease," which falls squarely within the standards set out in the PMPA.[5] Petitioners want to

---

[4] Indeed, Petitioners' failure to allege a claim under the PMPA is solid evidence that they admit the termination complied with PMPA standards.

[5] Petitioners say that the purpose of the PMPA was to "protect franchisees" (Pet. 6), and that their state law tort claims should be allowed because they provide franchisees with "additional" protection. Pet. 10. This is wrong. Congress determined to protect franchisees by creating uniform standards governing the termination of franchises. Petitioners' supposed rule would interfere with Congress' chosen method and is therefore preempted:

> [I]t is not enough to say that the ultimate goal of both federal and state law [is the same]. A state law also is preempted if it interferes with the methods by which the federal statute was designed to reach this goal.

International Paper Co. v. Ouellette, — U.S. —, 107 S. Ct. 805, 813 (1987) (Common law nuisance claims preempted because they interfere with standards of Clean Water Act).

impose different state-law standards and subject Mobil to liability for doing just what the PMPA allows. Petitioners thus seek a remedy that is the converse of, not "the same as," the PMPA remedy. That is exactly what the PMPA prohibits, and what the court of appeal held preempted. There is nothing to review.

CONCLUSION

The court of appeal's decision presents no issue of consequence. At most, the decision involves interpretation of a complaint that has no bearing on any other case and that was correct in any event. Accordingly, Mobil respectfully requests the Court to deny the Petition for Certiorari.

Respectfully submitted,

JOHN R. REESE*
LESLIE G. LANDAU

Attorneys for Respondent
Mobil Oil Corporation

*Counsel of Record

WILLIAM K. O'BRIEN
McCUTCHEN, DOYLE, BROWN & ENERSEN
Of Counsel
September 10, 1987

RULE 28.1 LIST

APPENDIX A

Mobil Oil Corporation is a wholly owned subsidiary of Mobil Corporation which is publicly held. Listed below are the affiliates and subsidiaries of Mobil Corporation, Mobil Oil Corporation, and their affiliates and subsidiaries which are or may be publicly held. For purposes of this list only companies in which a five percent (5%) or greater interest is held are considered.

NAME OF COMPANY

Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO Holdings Limited
AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH
AK Chemie GmbH & Co kG
Akauma Rekisei Kogyo Kabushiki Kaisha
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamullori Pagariama A.S.
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Ammenn GmbH
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian Energy Company Limited, The
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.
Arabian Trading Company S.A.
Aral Aktiengesellschaft

A/S Fjellvegen
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Sahara S.A.
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anonim Sirketi
B.V. Beheersmaatschappij MOBEM
Bayerische Erdgasleitung GmbH
Bin Sulaiman Mobil Towers
Bayerische Mineral Industrie A.G.
Beer GmbH
Beer GmbH & Co. Minerol-Vertriebe—KG
Bosques Nacionales, Ltda.
Bow Fortune S.A.
Bow Spring Shipping S.A.
Bow Star S.A.
Bow Sun S.A.
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation
Canner's Steam Company, Incorporated
Cansulex Limited
Canyon Reef Carriers, Inc.
Cartoenvazes Valencia, S.A.
Carton de Colombia, S.A.
Carton de Venezuela, S.A.
Cartones Nationales, S.A.
CAS (Combined Automation Systems) B.V.
Celmisia Shipping Corporation
Celulosa y Papel de Colombia, S.A.
Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercera, S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Gas Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Colonial Pipeline Company
Comet-Brennstoffdienst GmbH.
Commercial Polymers Pty. Ltd.

Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun
Compagnie D'Entreposage Communautaire
Compagnie Rhenane de Raffinage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania Colombiana de Empaques Bates, SSA
Compania Colombiana De Forestacion S.A.
Compania de Lubricants' de Chile Limitada
(Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales,
S.A. de C.V.
Consortium Raymond Duez
Constructora Calle 70, S.A.
Cook Inlet Pipe Line Company
Corrugadora de Carton, S.A.
Cyprus Petroleum Refinery Limited
D. Muhlenbruch GmbH
D. Muhlenbruch GmbH & Co. KG
Dai Nippon Jushi K.K.
Dearborn Land Company
De. Ba. S.p.A.—Industria Petrolifero Deposito di Bari
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Deport de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Pentosin-Werke GmbH
Deutsche Transalpine Celleitung GmbH
Dicomi S.r.l.
Dixie Pipeline Company
Dukhan Services Company
East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
East Texas Salt Water Disposal Company
Emoleum (Asphalts) Limited
Energas S.r.l.
Entrepot Petrolier de Chambery
Entrepot Petrolier de Dijon
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de Nancy
Enterprise Jean Lefebvre

Erdgas-Verkaufs-Gesellschaft mbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oMG
Erdoelbetrieb Reitbrook
Etablissments Bouthenet
Ets. Le Goff
Europetrol S.p.A.
Faavang Autoverkstad A/S
FACEL
Fairwind Maritime Company, S.A.
Felix Oil Company
Fibil, S.A.
Fibras Internacionales de Puerto Rico, Inc.
Filtros De Costa Rica S.A.
Finsbury Printing Limited
Frome-Broken Hill Company Proprietary Limited
Fruehmesser Mineraloelhandeis GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha
Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.
Gatwick Refueling Services Limited
Gaz Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.
Groupement Petrolier Aviation G.P.A.
Groupement Petrolier De Brest (GPB)
Handelmaatschappij Hugenholtz & Co. B.V.
Haniel Handel Gmbh
H. van der Heijden Service Stations B.V.
Heizoel-Handelsgesellschaft mbH
Hellas Gas Storage Company S.A.
Hormoz Petroleum Company
Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt
Imbert G. Distribution De Produits Petroliers
Inmunizadoras Unidas, S.A.
Industria De Carbon Del Valle Cauca, S.A.

Induustria Interamericana De Filtros Ltda. (INTERFIL)
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions Limited
Iraq Petroleum Transport Company Limited
Iside, S.p.A.
Istanbul Petrol ve Makine Yaglari Limited Sirketi
Italoil S.p.A.
Japan Airport Fueling Service Co. Limited
J.E.C.O.P.
K.K. Sankyo Plastics
K.K. Toresen
Kanto Kygnus Sekiyu Hambai K.K.
Karl Storz Gmbh & Co. KG
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keinin Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineraloel KG
Kobe Port Service Kabushiki Kaisha
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu Kabushiki Kaisha
Kyokyto Petroleum Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha
Leporati S.p.A.
Les Supermarches De Cote D'Ivoire
Kikit Petrol Gazi ve Yakit Ticaret A.S.
Loba Chemie Gesellschaft mbh
Lubland Limited
Lubricantes del Sur, S.A.
Marceaux & Cie
Mateo Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
Mediterranean Refining Company
Meentzen & Franke GmbH & Co.

Mertl GmbH
Mineralol-Handels-Gesellschaft Mbh
Mobil Atlas Sociedad Anonima de Capital Variable
Mobil Catalystst Corporation of Japan
Mobil Comercio, Industria e Servicos Ltda.
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG
Mobil Nile Oil Company
Mobil Oil Gabon
Mobil Oil Ghana Limited
Mobil Oil Maroc
Mobil Oil Nigeria Limited
Mobil Oil Nord-Africaine
Mosul Petroleum Company Limited
Motel Rest SA
Mt. Marrow Blue Metal Quarries Pty.
Near East Development Corporation
Neptune Bulk Terminals (Canada) Ltd.
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
New Zealand Synthetic Fuels (Housing)
Corporation Limited
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nottingham Gas Limited
Nuova Europetrol S.p.A.
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Occidental de Empaques, Ltda.
Octel Associates
Octel S.A.
Oilkol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit
beschrankter Haftung
Olympic Pipe Line Company
Osage Pipe Line Company

P.T. Arun Natural Gas Liquefaction Company
P.T. Berau Coal
P.T. Stanvac Indonesia
Paloma Pipe Line Company
Pars Investment Corporation
Paul Harling Mineralole Gmbh & Co. KG
P.6—Groep B.V.
Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Development (Cyprus) Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company Inc.
Petrol Fuel S.p.A.
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.
Pipe Line Banal de La Goulette
Plegadizos para la Industria S.A.
Poly Oil Chimie (P.O.C.)
Products Derivados de la Sal, S.A.
Progas Limited
Qatar Petroleum Company Limited
Qualbank, Inc.
Rainbow Pipe Line Company, Ltd.
Reforestadora Andina, S.A.
Reforestadora del Cauca, S.A.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Road Binders (Proprietary) Limited
Rohol-Aufauchungs Gesellschaft mbH
Rundel Mineralolvertrieb Gmbh
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Santa Clara Waste Water Company
Sanwa Kasei Kogyo Kabushiki Kaisha
Sarni S.p.A.
Saudi Arabian Maritime Company
Saudi Can Company, Ltd., The

Saudi Chemical Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited
Saudi Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
SENERCO
Seram Societa per Azioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The
Sociedad Calle 67, Ltda.
Sociedade Portugal Marrocos SARL
Societa Italiana per l'Oleodotto Transalpino, S.p.A.
Societe Africaine de Raffinage
Societe Alfred Ott & Cie
Societe Beige de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication
De Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha
Societe Civile Immobiliere Courcelles-Etoile
Societe Civile Immobiliere de Construction
de 34 Avenue du General Leclerc a Boissy-St-Leger
Societe Civile Immobiliere de Construction
"La Residence Brune"
Societe Civile Immobiliere du 10 Bd. de la
Republique A La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Dahomeenne d'Entreposage de Produits
Petroliers
Societe d'Armement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CM 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Gestion des Stocks Petroliers de Cote D'Ivorie
Societe de Manutention de Carburants Aviation
(S.M.C.A.)
Societe de Manutention de Carburants Aviation
Dakar-Yoff

Societe de Manutention de Carburants Aviation de Tahiti (SOMCAT)
Societe de Materialx d'Etancheite Pour Le Enterprises (Meple)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)
Societe d'Entreposage de San Pedro (SESP)
Societe d' Entreposage Petrolier au Burundi
Societe d'Habitations a Loyer Modere de la Seine Maritime
Societe des Bitumez et Cut-Backs du Cameroun
Societe Des Huiles Lemahieu
Societe du Pipe Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entreposage de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles de Lattaquia (Syrie) S.A.
Societe Ivoirienne de Fabrication de Lubrifiants (S.I.F.A.L.)
Societe Ivoirienne de Raffinage
Societe Mauritanienne d'Entreposage de Produits Petroliers
Societe Malienne D'Entreposage (SME)
Societe Nationale de Raffinage (Sonara)
Societe Nouvelle pour l'Dpuration des Muilec do Transforateura—Septro
Societe Pizo De Formulation De Lubrifiants (PIZOLUB)
Societe Tahitienne de Depots Petroliers
Societe Tchadienne O'Entreposage de Produits Petroliers
Societe Togolaise d'Entreposage (STE)
Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saskatchewan Pipe Line Company
Statfjord Transport A.S.
Sydney Metropolitan Pipeline Pty. Ltd.
Syria Petroleum Company Limited

System Plaza Inc.
T.R. Miller Mill Company, Inc.
Tankbau Gmbh
Tanklagergesellschaft Koln-Bonn
Tecklenburg GmbH
Tecklenburg GmbH & Co. Energiebedarf K.G.
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
T. M. Duche Co., Inc.
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tonen Energy International Corp.
Tonen Maintenance Kabushiki Kaisha
Tonen Sekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology Kabushiki Kaisha
Total Centrafricaine de Gestion (TOCAGES)
Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgas Umschlags-Lager-Und Transport
Gesellschaft MbH
Turkish Petroleum Company Limited
Twifo Oil Palm Plantations Ltd.
UBAG Unterflur Betankungsanlage Flughafen Zurich
Union Grafica, S.A.
United Kingdom Oil Pipelines Limited
W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabushiki Kaisha
Walton, Gatwick Pipeline Company Limited
Werner Weidemann Mineraloelvertrieb G.m.b.H.
Western Platinum Ltd.
West London Pipeline & Storage Limited
West Shore Pipe Line Company
Wilhelm Martl GmbH & Co. KG

Wolverine Pipe Line Company
WSG, Warmeservice Gmbh
Wyco Pipe Line Company
Wymondham Oil Storage Co., Limited
Zaire Mobil Oil
Zaire Services Des Enterprises Petrolieres